

1 THE HONORABLE RICHARD A. JONES
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5 UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MELISSA A. REIMER

9 Plaintiff,

10 v.

11 THE COUNTY OF SNOHOMISH,
12 SNOHOMISH COUNTY FIRE DISTRICT
13 #1, AND BRAD REDDING,

14 Defendants.

15
16 CASE NO. 2:17-CV-00384-RAJ

17 ORDER

18 This matter comes before the Court on Defendants' Motion to Quash Service and to
19 Dismiss. Dkt. # 16. Plaintiff opposes the motion. Dkt. # 18. For the reasons that follow,
20 the Court **GRANTS in part and DENIES in part** the motion.

21 **I. BACKGROUND**

22 Plaintiff filed suit against Defendants Snohomish County Fire District # 1 ("Fire
23 District") and Fire Chief Brad Reading, in his individual and official capacity, for federal
24 and state discrimination claims and emotional distress. Dkt. # 1 (Complaint). Plaintiff has
25 been represented by counsel since commencing the lawsuit. Nonetheless, Plaintiff did not
26 properly serve Defendants with the Complaint and Summons, and the Court issued an
order to show cause why it should not dismiss the claims for failure to serve. Dkt. # 4.

1 Plaintiff, through her attorneys, responded to the order to show cause and committed to
2 properly serving Defendants. Dkt. # 9.

3 To serve Mr. Reading, Plaintiff served the Washington State Attorney General, Dkt.
4 # 10, and Mr. Reading's administrative assistant, Dkt. # 11. Plaintiff did not file any
5 affidavits of service of summons and complaint that directly addressed the Fire District.
6 Weeks after Defendants filed this motion and well after its noting date, Plaintiff asked the
7 clerk to issue summons on the Fire District. Dkt. # 20. The clerk electronically issued
8 summons to the Fire District but no response from the Fire District has been recorded.
9 Dkt. # 21.

10 **II. LEGAL STANDARD**

11 Defendants seek dismissal pursuant to Federal Rules of Civil Procedure 12(b)(5)
12 and 12(b)(6). It is axiomatic that the court cannot exercise jurisdiction over a defendant
13 without proper service of process. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*,
14 526 U.S. 344, 350 (1999); *S.E.C. v. Ross*, 504 F. 3d 1130, 1138–39 (9th Cir. 2007) (“[I]n
15 the absence of proper service of process, the district court has no power to render any
16 judgment against the defendant’s person or property unless the defendant has consented to
17 jurisdiction or waived lack of process.”).

18 Federal Rule of Civil Procedure 12(b)(5) allows a defendant to move to dismiss an
19 action where service of process of a summons and complaint is insufficient. *See Fed. R.*
20 *Civ. P. 12(b)(5)*. Once a defendant challenges service of process, the plaintiff bears the
21 burden of establishing the validity of service of process under Federal Rule of Civil
22 Procedure 4. *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).

23 Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for
24 failure to state a claim upon which relief can be granted. *Fed. R. Civ. P. 12(b)(6)*. The
25 rule requires the court to assume the truth of the complaint’s factual allegations and credit
26 all reasonable inferences arising from those allegations. *Sanders v. Brown*, 504 F. 3d 903,

1 910 (9th Cir. 2007). A court “need not accept as true conclusory allegations that are
2 contradicted by documents referred to in the complaint.” *Manzarek v. St. Paul Fire &*
3 *Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must point to factual
4 allegations that “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*
5 *Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint avoids
6 dismissal if there is “any set of facts consistent with the allegations in the complaint” that
7 would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

8 A court typically cannot consider evidence beyond the four corners of the
9 complaint, although it may rely on a document to which the complaint refers if the
10 document is central to the party’s claims and its authenticity is not in question. *Marder v.*
11 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A court may also consider evidence subject to
12 judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

13 III. DISCUSSION

14 A. Failure to properly serve the Fire District and Mr. Reading

15 The Fire District is a government entity that must be served pursuant to Federal
16 Rule of Civil Procedure 4(j)(2). Rule 4(j)(2) requires Plaintiff to serve the Fire District by
17 either (1) serving the chief executive officer, or (2) serving “in the manner prescribed by
18 that state’s law for serving a summons or like process on such a defendant.” Fed. R. Civ.
19 P. 4(j)(2). In Washington, plaintiffs suing a fire district must serve “the superintendent or
20 commissioner thereof or by leaving the same in his or her office with an assistant
21 superintendent, deputy commissioner, or business manager during normal business hours.”
22 Wash. Rev. Code Ann. § 4.28.080. As an initial matter, Plaintiff did not direct any
23 summons to the fire district. Fed. R. Civ. P. 4(a)(1) (requiring summons to be directed to
24 the defendant). She only directed summons to Mr. Reading. However, even if she had
25 directed summons to the fire district, she did not serve any entity listed in RCW §
26 4.28.080.

1 Plaintiff is suing Chief Reading in both his individual and official capacity, but she
2 failed to effectuate proper service either way. To serve Mr. Reading in his official
3 capacity, Plaintiff needed to serve the Fire District, which she failed to do properly. To
4 serve Mr. Reading in his individual capacity, Plaintiff needed to abide by the requirements
5 of Rule 4(e). She did not properly serve Mr. Reading as an individual.

6 Plaintiff did not satisfy her burden of demonstrating proper service on the Fire
7 District or on Mr. Reading. As such, the Court has discretion to either dismiss or retain the
8 action. *See Stevens v. Sec. Pac. Nat'l Bank*, 538 F.2d 1387, 1389 (9th Cir. 1976).
9 “Dismissal of a complaint is inappropriate when there exists a reasonable prospect that
10 service may yet be obtained. In such instances, the district court should, at most, quash
11 service, leaving the plaintiffs free to effect proper service.” *Arasan Chip Sys., Inc. v. Sonix*
12 *Tech. Co. Ltd.*, No. 509-CV-02172 JF PVT, 2010 WL 890424, at *1 (N.D. Cal. Mar. 8,
13 2010) (internal quotation omitted); *see also Randolph v. City of E. Palo Alto*, No. C 06-
14 07476 SI, 2007 WL 1232057, at *3 (N.D. Cal. Apr. 26, 2007) (noting that “[i]f the Court
15 decides not to dismiss, it quashes the ineffective service that has been made on the
16 defendant and provides the plaintiff the opportunity to serve the defendant again
17 effectively”); *S.J. v. Issaquah Sch. Dist.* No. 411, 470 F. 3d 1288, 1293 (9th Cir. 2006)
18 (noting that “even if service were insufficient—on which we express no opinion—we
19 could not simply affirm dismissal because the district court has discretion to dismiss an
20 action or to quash service”). Here, the Court determines that there is a reasonable prospect
21 that service can be properly effectuated, and therefore, the Court retains the action but
22 quashes Plaintiff’s prior attempts at service. Plaintiff must, within 21 days of the date of
23 this Order, properly effectuate service on Defendants pursuant to Rule 4. In addition,
24 within 21 days of the date of this Order, Plaintiff must file a submission with the Court
25 clearly establishing her proper service of the summons and a copy of the complaint on
26 Defendants. Alternatively, the parties may work together to stipulate to proper service.

1 B. Dismissal of state tort claims

2 Washington's claim filing statute requires plaintiffs to give local government
3 entities notice prior to filing suit for tortious conduct. RCW § 4.96.020(4)¹. Plaintiff
4 argues that the Equal Employment Opportunity Commission (EEOC) complaint and Right
5 to Sue letter were sufficient to satisfy the claim filing statute. Dkt. # 18 at 10 (claiming
6 that the EEOC complaint and Right to Sue substantially comply with RCW § 4.96.020 but
7 failing to attach the EEOC complaint and Right to Sue letter to the brief). But neither of
8 these documents satisfy the purpose of the claim filing statute: alerting the Fire District to
9 Plaintiff's decision to sue. Because Plaintiff concedes that she failed to properly serve the
10 Fire District, the Court **GRANTS** Defendants' motion with regard to Plaintiff's disability
11 discrimination claim and her claims for emotional distress.²

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19 ¹ The relevant portion of the statute reads:

20 No action subject to the claim filing requirements of this section shall be
21 commenced against any local governmental entity, or against any local
22 governmental entity's officers, employees, or volunteers, acting in such capacity,
23 for damages arising out of tortious conduct until sixty calendar days have elapsed
24 after the claim has first been presented to the agent of the governing body thereof.
The applicable period of limitations within which an action must be commenced
shall be tolled during the sixty calendar day period. For the purposes of the
applicable period of limitations, an action commenced within five court days after
the sixty calendar day period has elapsed is deemed to have been presented on the
first day after the sixty calendar day period elapsed.

25 Wash. Rev. Code Ann. § 4.96.020.

26 ² Although the Court is allowing Plaintiff additional time to properly serve the Complaint and Summons, the Court
finds that any attempt to litigate the state tort claims—in light of the procedural errors—is futile.

1 **IV. CONCLUSION**

2 Based on the foregoing, the Court **GRANTS in part and DENIES in part**
3 Defendants' motion. Dkt. # 16. The Court **GRANTS** the motion with regard to Plaintiff's
4 state tort claims for disability discrimination and emotional distress. The Court grants
5 Plaintiff additional time to properly serve Defendants with the Complaint and Summons so
6 that she may have an opportunity to litigate the remaining claims. The Court directs the
7 clerk to dismiss this matter if Plaintiff does not properly serve Defendants within 21 days
8 from the date of this Order.

9 Dated this 11th day of May, 2018.

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17 The Honorable Richard A. Jones
18 United States District Judge
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